In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 466

GEORGE H. BRASIER, PETITIONER

v.

UNITED STATES OF AMERICA; H. V. HIGLEY, Administrator of Veterans' Affairs, Veterans' Administration, Washington, D. C.; TED MARTENS, Chief of Vocational Rehabilitation, Lincoln, Nebraska; FREEMAN B. DECKER, Superintendent of Public Instruction, Lincoln, Nebraska; WAYNE O. REED, Former Superintendent of Public Instruction, Lincoln, Nebraska; and OTTO G. RUFF, Former Supervisor of Veterans' Education, Lincoln, Nebraska

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS THE UNITED STATES, H. V. HIGLEY, AND TED MARTENS, IN OPPOSITION

OPINIONS BELOW

The memorandum opinions of the District Court (R. 26-40, 61-63) are not reported. The opinion

of the Court of Appeals (Pet. App. 17-23) is reported at 223 F. 2d 762.

JURISDICTION

The judgment of the Court of Appeals was entered on June 21, 1955 (Pet. App. 24). A petition for rehearing was denied on July 27, 1955. The petition for a writ of certiorari was filed on October 15, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the District Court, as affirmed by the Court of Appeals, properly held that it lacked jurisdiction to entertain petitioner's complaint.

2. Whether the District Court and Court of Appeals correctly determined that the Veterans' Administration's withdrawal of approved status of petitioner's school did not contravene the terms of the contract between the two parties.

3. Whether the District Court and the Court of Appeals properly held that the Administrator of Veterans' Affairs was not subject to suit in the District of Nebraska.

STATUTES AND REGULATIONS INVOLVED

The relevant portions of the Independent Offices Appropriation Act, 1950, 63 Stat. 631, 653; the Act of October 17, 1940, 54 Stat. 1193, 1197, 38 U.S.C. 11a-2; the Act of March 20, 1933, 48 Stat. 8, 9, 38 U.S.C. 705; and Veterans' Administration Instruction No. 1 of September 8, 1949, 14 F.R. 5593, 38 C.F.R. 21.690, are set forth in the Appendix, *infra*, pp. 11-13.

STATEMENT

Petitioner, George H. Brasier, as the owner of Lincoln Barber College, brought this action in the United States District Court for the District of Nebraska. He joined as defendants the United States, H. V. Higley, the Administrator of Veterans' Affairs, Ted Martens, a Veterans' Administration official, and various Nebraska public officials, all of whom are respondents in this Court. Petitioner sought to recover damages from respondents resulting from the alleged repudiation of a contract with the Veterans' Administration for training eligible veterans to become barbers. On November 19, 1954, the District Court, pursuant to its prior memorandum opinions (R. 26-40, 61-63), dismissed petitioner's amended and supplemental complaint (R. 63-64). On appeal, the Court of Appeals for the Eighth Circuit unanimously affirmed (Pet. App. 24).

The relevant facts, as appearing from the complaint, as amended and supplemented, may be summarized as follows:

Petitioner was the owner and operator of the Lincoln Barber College in Lincoln, Nebraska (R. 55). On November 15, 1948, the school received approval by the Department of Public Instruction, State of Nebraska, of a proffered course in barbering to eligible veterans under the Servicemen's Readjustment Act of 1944, 58 Stat. 284, 38 U. S. 693, *et seq.*, as amended (R. 56-57). Subsequently, on August 8, 1949, the Veterans' Adminis-

tration contracted with the school for the training of eligible veterans at Government expense from July 1, 1949, to June 30, 1950 (R. 7).[1]

The contract, a copy of which was attached to the complaint, contained the following provision (R. 13):

> Article 7. Limitation
>
> It is understood and agreed that the terms of this contract are subject to and will be governed by, Veterans Administration regulations issued pursuant to Public Laws 16 and 346, as amended, and that any obligation assumed by the Veterans Administration under this contract is limited to the appropriated funds made available therefor.

On August 24, 1949, Congress enacted Public Law 266, the Independent Offices Appropriation Act, 1950, which provided that no part of the appropriation made for education and training under Title II of the Servicemen's Readjustment Act of 1944 should be expended after the effective date of the Appropriation Act "[f]or any veteran for a course in an institution which has been in operation for a period of less than one year immediately prior to the date of enrollment in such course unless such enrollment was prior to the date of this Act" (App. *infra*, pp. 11-12).

---

[1] The contract is dated August 8, 1949; however, petitioner claims that it was not formally approved by the Veterans' Administration until September 6, 1949 (R. 57).

Thereafter, on September 12, 1949, State approval of petitioner's school for the training of veterans was withdrawn (R. 2-3), and on September 13, 1949, the Veterans' Administration terminated the approved status of the school for training veterans not already enrolled as of August 24, 1949 (R. 3).[2] The complaint states that petitioner continued throughout the term of his contract to operate the barber college, notwithstanding the small number of students in attendance, but that the college then collapsed for lack of students (R. 58). This absence of students was attributed by the complaint to the impact of Public Law 266 and the consequent action of the defendants (R. 58).

On May 5, 1954, petitioner filed this action in the District Court for the District of Nebraska alleging that the removal of his approved status by the various Federal and State officials named as defendants, acting in concert under the impetus of Public Law 266, constituted, among other things, an impairment of the obligation of his contract with the Veterans' Administration and a taking of his property without just compensation and in violation of due process of law (R. 1-6). The complaint, as subsequently supplemented and amended, sought $10,000 in damages from the United States and the other Federal defendants, and $25,440 from the defendant State officials, for the damages allegedly incurred (R. 59). Defend-

[2] Although it is only suggested in his complaint, petitioner now concedes that his school had not been in operation for a period of one year prior to August 24, 1949 (Pet. 7).

ants moved to dismiss for (1) lack of jurisdiction, (2) improper venue as to the Administrator of Veterans' Affairs, and (3) failure of the complaint to state a claim upon which relief could be granted (R. 59-60).

On November 19, 1954, the District Court, pursuant to its prior memorandum opinions (R. 26-40, 61-63), dismissed the complaint (R. 63-65). Citing 38 U.S.C. 11a-2 and 38 U.S.C. 705 (App. *infra*, p. 11), the court stated that it was precluded by statute from reviewing the federal administrative action complained of, and thus lacked jurisdiction to entertain petitioner's complaint (R. 33-36).[3] Moreover, the court stated, Article 7 of the contract between petitioner and the Veterans' Administration (*supra*, p. 4) sustained the termination of the contract, which resulted from the appropriations limitation contained in Public Law 266 (R. 34). With respect to respondent Higley, the Administrator of Veterans' Affairs, the court ruled that his official station was in the District of Columbia, and that venue was improperly laid in Nebraska (R. 37). On appeal, the judgment of the District Court was affirmed for essentially the same reasons given by the lower court (Pet. App. 17-23).

ARGUMENT

Both the District Court and the Court of Appeals found jurisdictional and venue barriers to petitioner's suit and observed, in addition, that his

[3] The court held that this lack of jurisdiction extended to the named State defendants as well (R. 38-39).

claim on the merits was baseless. These rulings are eminently correct; no unresolved matter of importance is presented; and there is no occasion for further review.

1. Apart from the total lack of substance to petitioner's claim when considered on its merits (*infra*, pp. 8-10), it is evident at the outset that the District Court lacked jurisdiction to entertain his suit. The gravamen of petitioner's complaint is the decision of respondent Administrator of Veterans' Affairs to withdraw the approved status of petitioner's school for the training of veterans who were not enrolled as of August 24, 1949. This decision of the Administrator was squarely within the purview of both 38 U. S. C. 11a-2 and 38 U. S. C. 705 (App. *infra*, p. 11).[4] By the express terms of those provisions, the Administrator's decision was final and conclusive upon all questions of law and fact, and jurisdiction to review by any court of the United States was precluded. This statutory withdrawal of jurisdiction barred consideration of petitioner's claim by the District Court and necessitated its dismissal. See *Lynch* v. *United States*,

---

[4] 38 U.S.C. 11a-2 (App. *infra*, p. 11) covers all decisions of the Administrator except those arising out of disagreements as to claims under Government insurance contracts. 38 U.S.C. 705 (*ibid.*) applies only to specified statutory provisions administered by the Veterans' Administration. The vocational rehabilitation and educational and training programs of World War II veterans fall within 38 U.S.C. 705. See 38 U.S.C. 697(a), 701(f), and 38 U.S.C. Ch. 12A, Reg. 1(a); *Fletcher* v. *Veterans Administration*, 103 F. Supp. 654, 656 (E.D. Mich.); *New York Technical Institute of Maryland* v. *Limburg*, 87 F. Supp. 308, 310 (D. Md.).

292 U. S. 571, 580-587; *Fletcher* v. *Veterans Administration,* 103 F. Supp. 654 (E. D. Mich.).

An additional obstacle is interposed with respect to the joining of respondent Higley, Administrator of Veterans' Affairs, as a defendant below. The Administrator's official residence is in the District of Columbia and he was not subject to suit in the District of Nebraska. *Blackmar* v. *Guerre,* 342 U. S. 512, 516.

2. Examination of petitioner's claim on its merits yields no different result. His grounds for relief are negatived by the terms of the very contract upon which he relies. Article 7 of the contract of August 8, 1949, between petitioner and the Veterans' Administration (*supra,* p. 4), specifically provided that any obligation assumed by the latter "under this contract is limited to the appropriated funds made available therefor." Congress, by the Independent Offices Appropriation Act, enacted August 24, 1949 (App. *infra,* pp. 11-12), directed that no part of the appropriation for veterans' training under the Servicemen's Readjustment Act of 1944 could be expended after the date of the Act "[f]or any veteran for a course in an institution which has been in operation for a period of less than one year immediately prior to the date of enrollment in such course unless such enrollment was prior to the date of this Act". The Veterans' Administration followed the mandate of that Act in its consequent actions with respect to petitioner's school. His contract rights being expressly subject to future appropriations by Con-

gress, petitioner can assert no grounds for relief.

Although there is much equivocation on his part, petitioner does concede at one point that his school had not been in operation for one year prior to August 24, 1949 (Pet. 7). He attempts to circumvent this disqualifying circumstance by his claim that the Veterans' Administration "waived" (Pet. 7) the one-year requirement by formally approving the contract after enactment of the Appropriation Act (Pet. 7-8). It is obvious, however, that irrespective of when administrative ratification of this contract finally came, the Veterans' Administration could not waive the statutory requirement. Cf. *Federal Crop Insurance Corp.* v. *Merrill,* 332 U. S. 380, 384.

Petitioner's contention that Veterans' Administration Instruction No. 1, 14 F. R. 5593 (App. *infra,* pp. 12-13), issued subsequent to the Appropriation Act and requiring a student enrollment of twenty-five in defining "operation" for one year, was an unwarranted extension of the Act is similarly devoid of merit. Irrespective of that regulation, petitioner's school, by his own admission (Pet. 7), had not been in operation for the requisite year prior to August 24, 1949, the date of the enactment of the Appropriation Act. In providing the one year restriction, Congress was intent on preventing the dissipation of funds it was appropriating for veterans' training to fly-by-night schools, and to schools which came into existence solely to take advantage of the veterans' educational program but had no background of experience to offer. The

CERTIFICATE.

George H. Brasier, pro se, hereby certifies the above is restricted to Rule 15 of the Revised Rules of this court and is for the purpose of obtaining **justice** and not for the purpose of delay.

Respectfully submitted,

GEORGE H. BRASIER,
Pro se.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes and regulations involved	2
Statement	3
Argument	6
Conclusion	10
Appendix	11

Cases:

Blackmar v. *Guerre*, 342 U. S. 512	8
Federal Crop Insurance Corp. v. *Merrill*, 332 U. S. 380	9
Fletcher v. *Veterans Administration*, 103 F. Supp. 654	7, 8
Lynch v. *United States*, 292 U. S. 571	7
New York Technical Institute of Maryland v. *Limburg*, 87 F. Supp. 308	7

Statutes:

Act of March 20, 1933, 48 Stat. 8, Section 5 (38 U. S. C. 705)	2, 6, 7, 11
Act of October 17, 1940, 54 Stat. 1193, Section 11 (38 U. S. C. 11a-2)	2, 6, 7, 11
Independent Offices Appropriation Act, 1950 [Public Law 266, 81st Cong.], 63 Stat. 631, 653	2, 4, 8, 11-12
Servicemen's Readjustment Act of 1944, 58 Stat. 284, 38 U. S. C. 693, *et seq.*, as amended	3
38 U. S. C. Ch. 12A, Reg. 1(a)	7, 10
38 U. S. C. 697(a)	7
38 U. S. C. 701(f)	7

Miscellaneous:

Veterans' Administration Instruction No. 1 of September 8, 1949, 14 F. R. 5593, 38 C.F.R. 21.690	2, 9, 12

Veterans' Administration's embodiment of that Congressional purpose in its subsequent interpretive regulation is manifestly not in excess of its authority to issue rules and regulations designed to carry out the veterans' educational and training programs. See 38 U. S. C. Ch. 12A, Reg. 1(a), Part VIII(9).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
PAUL A. SWEENEY,
MARCUS A. ROWDEN,
Attorneys.

NOVEMBER, 1955.

APPENDIX

1. Section 11 of the Act of October 17, 1940, 54 Stat. 1193, 1197, 38 U.S.C. 11a-2, provides:

> Notwithstanding any other provisions of law, except as provided in section 19 of the World War Veterans' Act, 1924, as amended, and in section 817 of the National Service Life Insurance Act of 1940, the decisions of the Administrator of Veterans' Affairs on any question of law or fact concerning a claim for benefits or payments under this or any other Act administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decisions.

2. Section 5 of the Act of March 20, 1933, 48 Stat. 8, 9, 38 U.S.C. 705, provides:

> All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title, or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision.

3. The Independent Offices Appropriation Act, 1950, enacted August 24, 1949 [Public Law 266,

81st Congress], 63 Stat. 631, 653, in pertinent part, provides:

> * * * no part of this appropriation for education and training under title II of the Servicemen's Readjustment Act, as amended, shall be expended subsequent to the effective date of this Act for subsistence allowance or for tuition, fees, or other charges in any of the following situations:
>
> (1) For any veteran for a course in an institution which has been in operation for a period of less than one year immediately prior to the date of enrollment in such course unless such enrollment was prior to the date of this Act;
>
> * * * * *

4. Veterans' Administration Instruction No. 1, September 8, 1949, applying the provisions of Public Law 266, 81st Congress, 14 F.R. 5593, 38 C.F.R. 21,690, in pertinent part, provided:

PROVISIONAL REGULATIONS

Application of the provisions of Public Law 266, 81st Congress, prohibiting expenditure of Government funds for courses of education or training until certain requirements are met—

> * * * * *
>
> (c) *Policy*—(1) Institutions in operation less than one year. * * *
>
> (ii) * * * In determining whether a school has been in operation for a period of

less than one year, the effective date of operation will be the date on which a full schedule of instruction was commenced by the school to a minimum of 25 students for which the school collected tuition. The school must have been in continuous operation under substantially the same ownership and management for a full twelve months period including reasonable vacation and holiday periods and must have provided to a minimum of 25 students during that full twelve months period the course or courses of substantially the same length and character as those offered following the twelve months period.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1988 388972 894